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FILED

DISTRICT COURT OF GUAM

NOV 21 2006 *huber*

MARY L.M. MORAN
CLERK OF COURT

9
10 **IN THE UNITED STATES DISTRICT COURT**
11
12 **FOR THE TERRITORY OF GUAM**

13 TCW SPECIAL CREDITS, et al.) Case No. 96-00055
14 Plaintiffs,) REQUEST FOR JUDICIAL
15 v.) ASSIGNMENT TO JUDGE JOHN
16 FISHING VESSEL CHLOE Z,) COUGHENOUR
17 Et al.,)
18 Defendants.)
19 -

20 Plaintiffs, ROBERT MATOS and SLOBODAN PRANJIC, by their
21 counsel, Dwight Ritter, request that the MATOS and PRANJIC
22 complaints, judgments, and all related TCW matters be assigned
23 for all purposes to Judge John Coughenour, Senior Judge of the
24 Western District Court of Washington, in Seattle, Washington,
25 based on the following:

26 1. The MATOS and PRANJIC claims have been pending in the
27 Guam District Court since June of 1992 and January of 1993. The
28 complaints remain unresolved and unpaid for approximately 14

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2 years. The initial jury trials in the Guam District Court
3 occurred in July, 1996, and were tried before Judge John
4 Coughenour. Thereafter, both MATO's verdict of \$ 1,497,955
5 (without interest) and PRANJIC's verdict of \$ 765,000 (without
6 interest) were appealed by the defendants to the 9th Circuit
7 Court of Appeals and those appeals were affirmed by the 9th
8 Circuit in November, 1999. Prior to the appeal, the F/V Chloe Z
9 vessel was arrested by creditors in an action known as the TCW
10 action, and MATOS and PRANJIC joined in that arrest and the
11 subsequent sale of the F/V Chloe Z. The sale occurred in
12 December, 1996 and the Chloe Z was sold for a sum of
13 approximately \$ 6,000,000.
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15 During that time, defendant F/V Chloe Z asserted that the
16 MATOS and PRANJIC *in rem* claims against the vessel were not
17 within the statute of limitations, even though the *in rem* claims
18 were included in the original complaints filed in Guam District
19 Court. Judge Unpingco ruled that the *in rem* claims were timely
20 filed and within the statute of limitations and that, even if
21 they weren't, equitable estoppel would preclude assertion of the
22 statute of limitations defense. In July, 1998, MATOS and PRANJIC
23 again tried their claims and obtained *in rem* judgments totaling
24 approximately \$ 1,200,000 (without interest) in about February
25 of 1999. Thereafter, F/V Chloe Z appealed to the 9th Circuit
26 Court of Appeals on the basis that the F/V Chloe Z had been
27 denied the opportunity to present their statute of limitation
28 defense. In September, 2000, the 9th Circuit remanded to the

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2 Guam District Court for reconsideration of the statute of
3 limitations issue and equitable estoppel. In April of 2004,
4 approximately seven years after Judge Unpingco's original ruling
5 and after two trials and two appeals, Judge Unpingco reversed
6 his original ruling of 1997 and denied MATOS and PRANJIC their
7 claims on the basis of statute of limitations and vacated the *in
8 rem* judgments.
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10 MATOS and PRANJIC then appealed the April, 2004, Judge
11 Unpingco decision to the 9th Circuit Court of Appeals. After
12 submitting briefs, preparing the records, and oral arguments,
13 the 9th Circuit Court of Appeals reversed Unpingco's decision
14 and held that the MATOS and PRANJIC complaints were filed within
15 the statute of limitations and that their *in rem* judgments are
16 valid. Thereafter, F/V Chloe Z filed their petition for
17 rehearing in the 9th Circuit and their petition for en banc
18 hearing. Both petitions were denied and the 9th Circuit issued
19 its mandate on September 11, 2006.
20

21 On October 12, 2006, Judge Coughenour requested status
22 reports from all counsels on the MATOS and PRANJIC matter and
23 counsel for MATOS and PRANJIC, F/V Chloe Z, and TCW filed their
24 reports. Shortly thereafter, MATOS and PRANJIC filed their
25 motion to establish prejudgment and post-judgment interest on
26 their reinstated judgments and F/V Chloe Z filed its opposition
27 which was followed by a timely MATOS and PRANJIC reply on
28 November 13, 2006.

29 F/V Chloe Z has recently requested an extension of time to

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2 file their petition for writ of certiorari to the U.S. Supreme
3 Court on the issue of statute of limitations and that petition
4 is due December 1, 2006. Thereafter, MATOS and PRANJIC will
5 file their opposition to the petition in the U.S. Supreme Court
6 and F/V Chloe Z will have the opportunity to reply to the
7 opposition. There is no limit on the period of time during which
8 the U.S. Supreme Court may review and consider a petition for
9 writ of certiorari. MATOS and PRANJIC are opposed to staying the
10 remaining issues in the TCW action until resolution of the
11 petition for writ of certiorari.
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13 2. Over the course of the past 14 years, MATOS and
14 PRANJIC, and their counsel, have received no payments on their
15 multimillion dollar claims and judgments. However, during the
16 course of this litigation, they have incurred very substantial
17 and large expenditures for costs, expenses, and, most
18 importantly, travel and lodging on the Island of Guam. As
19 counsel for plaintiffs, Dwight Ritter has made four appearances
20 on behalf of plaintiffs in Guam and never stayed less than two
21 weeks including trial time and trial preparation time. During
22 the appearance in 2002, the catastrophic Typhoon Pongsonwa hit
23 the island and caused horrendous damage to various buildings,
24 properties, vehicles, court facilities, and hotels. Typhoon
25 Pongsonwa lasted an incredible length of time, and at the end,
26 had caused horrible damage to nearly every person and location
27 on the island, including myself. Our hotel was severely damaged
28 and it was numerous days before air service was restored and

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2 anyone could leave the island. Like everyone else, we were
3 without food, water, and electricity. Nevertheless, we did not
4 waiver in our representation of the clients and returned to Guam
5 in May of 2004, and tried the issues that were pending at that
6 time. It now appears that despite the fact that plaintiffs
7 MATOS and PRANJIC hold four judgments, additional appearances
8 may be necessary on Guam to resolve ongoing collection problems.
9 Obviously, costs and expenses to the plaintiffs will increase
10 substantially with additional travel costs, lodging and
11 accommodations.
12

13 3. Currently, all primary counsel, not local counsel, are
14 located in Seattle, Washington except for Dwight Ritter, who is
15 counsel for plaintiffs MATOS and PRANJIC and is located in San
16 Diego. Thus, Dwight Ritter has proposed that since all primary
17 counsel are from Seattle, Washington, and Dwight Ritter is much
18 closer to Seattle, Washington, that Judge John Coughenour be
19 assigned the MATOS and PRANJIC complaints and all related TCW
20 matters for further litigation and proceedings. While the costs
21 of travel to Seattle will not be insignificant, nonetheless,
22 those travel costs will be substantially less than travel costs
23 and accommodations on the Island of Guam.
24

25 4. MATOS and PRANJIC, by their counsel, Dwight Ritter,
26 has proposed and is requesting that Judge John C. Coughenour,
27 Senior Judge of the Western District Court of Washington, in
28 Seattle, Washington, be assigned the MATOS and PRANJIC claims,
and all related TCW matters, for all purposes based on the

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2 following reasons:
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4 a. Judge John Coughenour is a well respected and
5 certainly very experienced trial judge who presided over the
6 first two MATOS and PRANJIC trials and is very familiar with the
7 claims and defenses of all parties and the history of this
8 litigation. In addition, Judge Coughenour has periodically been
9 assigned to handle various rulings in the TCW action and is now
10 the most experienced jurist on this case.

11 b. Dwight Ritter, as counsel for MATOS and PRANJIC,
12 is proposing to travel to Seattle for all purposes in an attempt
13 to reduce costs and continue further proceedings with a senior
14 jurist who is well experienced with this case. Most trips for
15 the hearings to Seattle can probably be managed without an
16 overnight accommodation and travel will occur within one day.

17 c. Primary defense counsel, because of their
18 location in Seattle, will have substantial cost savings as a
19 result of this assignment.

20 d. Also, there remain serious concerns about the res
21 funds of approximately \$ 6,000,000 that were ordered to be held
22 in the Court Registry. TCW appears to be stating that there are
23 less than sufficient funds to satisfy the MATOS and PRANJIC
24 judgments even though there was \$ 6,000,000 in funds at the time
25 of F/V Chloe Z's sale. Judge Coughenour, as a Senior Judge for
26 the District Court of Washington, has direct prior experience
27 that will assist in resolving or litigating serious claims that
28 exist among creditors to the \$ 6,000,000. For instance, Judge

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2 Coughenour is aware that a \$ 25,000,000 Protection and Indemnity
3 insurance policy existed on the vessel as that insurance issue
4 arose during the *in personam* trials in July of 1996.
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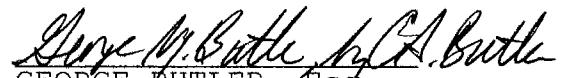
6 e. Michael Barcott, counsel for F/V Chloe Z,
7 suggests in his status report that "fact finding" proceedings
8 may be required and evidentiary hearings may be necessary and,
9 if so, then Seattle, Washington is certainly a more convenient
10 forum for all primary defense counsel. Craig Miller, counsel
11 for TCW, is there as well.
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13 5. This request for judicial assignment is subject, of
14 course, to the willingness and ability of Judge Coughenour to
15 accept the TCW matter for all purposes and accept the
16 responsibility for further proceedings. Certainly if Judge
17 Coughenour is unable or unwilling to serve, then his appointment
18 very quickly becomes a moot issue. Thus, a copy of this request
19 has been forwarded to the chambers of Judge John Coughenour for
20 his consideration. Were Judge Coughenour either to be unwilling
21 or unable to serve in this capacity, then this request will
22 certainly be ineffective in relieving the Guam District Court of
23 a horrendously burdensome case, with resolution long past due,
24 and of relieving all parties and their counsel of the financial
25 burden of further proceedings and litigation in the Guam
26 District Court.
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28 Wherefore, MATOS and PRANJIC, by their counsel, Dwight
Ritter, request a judicial assignment to Judge John Coughenour,
Senior Judge of the Western District Court of Washington, in

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2 Seattle, Washington, for all purposes regarding the MATOS and
3 PRANJIC complaints, judgments, and all related TCW actions.
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6 Dated: November 21, 2006


GEORGE BUTLER, Esq.
Attorney for Plaintiffs,
ROBERT MATOS and
SLOBODAN PRANJIC

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